Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1997

STEWART A. FELDMAN and MARLA B. MATZ, D.D.S.,

Petitioners,

vs.

NIEL MORGAN,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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II. STATEMENT OF FACTS

A. PRIOR PROCEEDINGS

This is the thirteenth of fourteen appeals that vexatious-attorney-litigant Stewart Feldman and his wife, Marla Matz, have filed to avoid complying with several orders of the United States Bankruptcy Court for the Southern District of Texas. The Feldmans' first twelve appeals were dismissed for want of prosecution or denied on their merits, and their fourteenth appeal is currently pending before the Fifth Circuit Court of Appeals. Nine of the Feldmans' fourteen appeals sought review of the same sanctions that are the subject of the Feldmans' petition to this Court. The following table sets forth the case number and disposition of the twelve appeals:

Appeal Civil Action Number	**Description**	**Status**
94-cv-1918	Appeal of Permanent Injunction	Affirmed on the merits.
95-cv-5660	Appeal of remand of removed cause of action	Dismissed; no brief filed or record designated in accordance with Bankruptcy Rules 8009 and 8006.
95-cv-5749	Appeal of remand of removed cause of action	Dismissed; no brief filed or record designated in accordance with Bankruptcy Rules 8009 and 8006.

Appeal Civil Action Number	Description	Status
95-cv-5659	Appeal of lifting of automatic stay	Dismissed; no brief filed or record designated in accordance with Bankruptcy Rules 8009 and 8006.
95-cv-5750	Appeal of lifting of automatic stay	Dismissed; no brief filed or record designated in accordance with Bankruptcy Rules 8009 and 8006.
96-cv-1413	Appeal of imposition of $8,000 in sanctions for discovery and other abuse	Dismissed; no brief filed or record designated in accordance with Bankruptcy Rules 8009 and 8006.
96-cv-1414	Appeal of imposition of $8,000 in sanctions for discovery and other abuse	Dismissed; no brief filed or record designated in accordance with Bankruptcy Rules 8009 and 8006.
96-cv-1839	Appeal of civil contempt judgment for failure to pay $8,000 in sanctions	Dismissed; no brief filed or record designated in accordance with Bankruptcy Rules 8009 and 8006.

Appeal Civil Action Number	Description	Status
96-cv-1840	Appeal of civil contempt judgment for failure to pay $8,000 in sanctions	Dismissed; no brief filed or record designated in accordance with Bankruptcy Rules 8009 and 8006.
96-cv-2473	Appeal of imposition of $30,000 in sanctions for bad faith filing	Dismissed. Appeal was not filed within jurisdictional time limits.
96-cv-0911	Appeal of $10,950 sanction for violation of permanent injunction	Dismissed; no brief filed or record designated in accordance with Bankruptcy Rules 8009 and 8006.
96-cv-2065	Appeal of civil contempt judgment for failure to pay $10,950 sanctions	Dismissed; no brief filed or record designated in accordance with Bankruptcy Rules 8009 and 8006.

The Feldmans did not seek Circuit Court review of the twelve prior appeals after the United States District Court had dismissed or denied each of them. The Feldmans' pending fourteenth appeal seeks relief from the Fifth Circuit on virtually identical grounds as the relief sought in this petition.

After losing the twelve appeals, the Feldmans sought relief under FED. R. CIV. P. 60(b) in an effort to avoid the *res judicata* effect of the prior Bankruptcy Court orders. The District Court properly denied the Feldmans' Rule 60(b) motion, and that denial forms the basis of the Feldmans' petition.

B. ERRORS IN PETITIONERS' FACTUAL ALLEGATIONS

The following statements correct factual statements made by the Feldmans that are incorrect or otherwise misleading—

1. The Feldmans have not paid even the base sanctions. To date, Morgan has received a total of only $12,706.80. On page 10 of their petition, the Feldmans incorrectly allege that they have paid the base sanctions.

2. The Feldmans incorrectly allege that only $18,950 of the total sanctions were compensatory, but the record does not support that allegation. For example, on June 7, 1996, the Bankruptcy Court imposed $30,000 of compensatory sanctions against the Feldmans. Those sanctions have not been paid. Nevertheless, the $30,000 is incorporated in the $253,700 of total sanctions awarded against the Feldmans.

3. The Feldmans have remained in continuous violation of a series of orders of both the Bankruptcy and District Courts. Nonetheless, the Feldmans disingenuously argue on pages 9-10 of their petition that "the record" does not reflect that they engaged in any subsequent wrongdoing. Of course, the record does not so reflect—the record could not possibly reflect misconduct that continued *after* the date of the evidentiary hearings.

4. The Feldmans' inaccurately describe the underlying Intermarque state court litigation on pages 5-6 of their petition. However, that inaccuracy is irrelevant to whether the Feldmans were required to comply with the Bankruptcy Court's orders.

5. MBM is not the reconstituted successor to Chelan Associates and MRES is not its general partner. The Feldmans did file fraudulent papers with the Texas Secretary of State *claiming* that MBM was the reconstituted successor and *claiming* that MRES was the new general partner. The Bankruptcy Court concluded that the Feldmans' reconstitution attempt was a sham and a contempt of prior state court orders. Those Bankruptcy Court findings were the subject of one of the Feldmans' earlier appeals that has been dismissed. The Feldmans' misrepresentations regarding MBM and MRES are on page 7 of their petition.

6. The Feldmans imply that they merely failed to cooperate in discovery. For example, on page 8 of their petition, the Feldmans allege that the sanctions were imposed for the Feldmans' "alleged failure to comply with a Morgan subpoena." In fact, the Bankruptcy Court determined that Mr. Feldman assaulted and battered one of Mr. Morgan's attorneys during a document production session. In defending himself, Mr. Feldman testified that—had the events of the day occurred in Mr. Feldman's home—Mr. Feldman would have been justified in *shooting opposing counsel with a gun*. This outrageous conduct, as opposed to a claimed benign failure to comply with discovery, was the conduct that resulted in sanctions against the Feldmans. The Feldmans appealed the Bankruptcy Court's order, but did not prosecute the now-dismissed appeal.

7. Finally, the Feldmans do not advise this Court that the Bankruptcy Court conducted a series of hearings on whether the Feldmans had the financial ability to pay the base sanctions before the Bankruptcy Court imposed the *per diem* sanctions. Indeed, the Bankruptcy Court concluded on two separate occasions that the Feldmans had the ability to pay the sanctions. Although the Feldmans appealed those findings, they failed to prosecute those now-dismissed appeals.

III. ARGUMENT AND AUTHORITIES

A. THE FELDMANS' PETITION DOES NOT MEET THE STANDARDS OF SUPREME COURT RULE 10

The Feldmans allege that the Fifth Circuit's decision conflicts with prior decisions of other Circuit Courts and this Court. The Feldmans are wrong.

The Fifth Circuit's *per curiam* decision is a simple affirmation of the District Court's sanctions order based on (i) the broad discretion granted to a District Court to impose sanctions, and (ii) the Feldmans' failure to prosecute their multiple prior appeals of the sanctions imposed against them.

Supreme Court Rule 10 states that a "petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Although the Feldmans allege that the Fifth Circuit committed error in its decision, they do not allege that the Fifth Circuit has misstated the law. Similarly, the Feldmans complain that the result in this case is inconsistent with prior decisions, but do not allege that the legal basis for the result is inconsistent with any Circuit Court's prior decision.

Moreover, the Feldmans argue that they should be allowed to relitigate matters now that the Feldmans have discovered the *Bagwell* decision. Under the Feldmans' interpretation of *Bagwell*, the results of the Fifth Circuit's decision in this case are inconsistent with the results that would have occurred had the Fifth Circuit applied the *Bagwell* decision properly. As explained below, the Feldmans are wrong about *Bagwell's* application to this case.

As set forth below, because of the adjudication of their prior appeals, *res judicata* precludes the consideration of the *Bagwell* issue in this appeal.

B. *RES JUDICATA* PRECLUDES THIS APPEAL

The Feldmans allege that *res judicata* cannot preclude a Rule 60(b) motion that is premised on an absence of jurisdiction or on a clear usurpation of power. The Feldmans are incorrect.

Under certain circumstances, a Rule 60(b)(4) motion can be used to mount a collateral attack of a void order. *Page v. Schweiker*, 786 F.2d 150, 154 (3d Cir. 1986). For example, Rule 60(b)(4) allows a collateral attack following a default judgment when personal jurisdiction is challenged or when a litigant alleges that it was never served with process.

However, a Rule 60(b)(4) motion is subject to the same *res judicata* principles as any other requested relief. *Page v. Schweiker*, 786 F.2d 150, 154 (3d Cir. 1986). Consequently, a litigant who participates in a federal lawsuit may not, on one hand, fail to protect that litigant's rights through an appeal of an adverse judgment and then, on the other hand, collaterally attack the judgment in subsequent proceedings. *Stoll v. Gottlieb*, 305 U.S. 165, 172 (1938). This is true even if—as the Feldmans allege with regard to the Bankruptcy Court sanction orders—the original judgment was entered without due process. *Williams v. New Orleans Public Service, Inc.*, 728 F.2d 730, 735 (5th Cir. 1984).

Consequently, so long as a party participates in litigation, the decision emanating from that litigation is final unless overturned on appeal. This is true even if a jurisdictional issue that was not raised in that litigation or a subsequent appeal might have otherwise rendered that decision void. This Court stated this principle fifty years ago in the following passage:

> It cannot now be broadly asserted that a judgment is always a nullity if jurisdiction of some sort or other is wanting. It is now held that, except in case of plain usurpation, a court has jurisdiction to determine

> its own jurisdiction, and if it be contested and on due hearing it is upheld, the decision unreversed binds the parties as a thing adjudged.

United States v. United Mine Workers of America, 330 U.S. 258, n. 57 (1947).

The principle established in *United Mine Workers* is commonly referred to as the "bootstrap" principle. The Third Circuit explained the principle in the following manner:

> [A] void judgment remains void until such time as jurisdiction is finally determined to exist, and, by virtue of the federal courts' 'jurisdiction to determine jurisdiction,' is elevated by its 'bootstraps' to the status of a valid judgment [citations omitted] or litigation of the issue is precluded by the doctrine of *res judicata*."

Page v. Schweiker, 786 F.2d 150, 154 (3d Cir. 1986).

The bootstrap principle has been concisely described in the following passage in regard to a voidness argument that is similar to that of the Feldmans' argument in their petition:

> [W]here the facts giving rise to subject matter jurisdiction have themselves been established in a federal court, that court's judgment is not subject to attack for voidness after the time for appeal has passed.

Vechione v. Wohlgemuth, 426 F.Supp. 1297, 1308 (E.D. Penn.), *aff'd.*, 558 F.2d 150 (3d. Cir.), *cert. denied*, 434 U.S. 943 (1977).

Accordingly, a collateral attack on a judgment based on an alleged lack of subject matter jurisdiction cannot be sustained. *Royal*

Ins. Co. of America v. Quinn-L Capital Corp., 960 F.2d 1286, 1293 (5th Cir. 1992). If the party against whom judgment was rendered elects not to appeal, then the judgment becomes final and the court's subject matter jurisdiction is insulated from collateral attack. *Royal Ins. Co. of America v. Quinn-L Capital Corp.*, 960 F.2d 1286, 1293 (5th Cir. 1992). This principle applies with equal force to bankruptcy court decrees. *Republic Supply v. Shoaf*, 815 F.2d 1046, 1053 (5th Cir. 1987).

Bankruptcy court orders have the same *res judicata* effect of other federal court orders. "The doctrine of res judicata applies with equal force to final judgments rendered by the bankruptcy courts and thus precludes relitigation in another bankruptcy proceeding and in other proceedings before Federal and State Courts." *In re Continental Airlines*, 145 B.R. 404, 409 (D. Del. 1992); *Stoll v. Gottlieb*, 305 U.S. 165, 170-71 (1938); *Chicot County Drainage Dist. v. Baxter State Bank*, 308 U.S. 371, 376-77 (1940).

Therefore, the Feldmans' argument that the Bankruptcy Court sanction orders are subject to continuous appeal and collateral attack is inconsistent with controlling authority. This Court stated the following long ago:

> Courts to determine the rights of parties are an integral part of our system of government. It is just as important that there should be a place to end as that there should be a place to begin litigation. After a party has had his day in court, with opportunity to present his evidence and his view of the law, a collateral attack upon the decision merely retries the issue previously determined.

Stoll v. Gottlieb, 305 U.S. 165, 172 (1938).

The Bankruptcy Court sanction orders do not remain subject to the Feldmans' continual attacks. A reviewing court will not

examine the underlying order when a party challenges the imposition of sanctions for that party's own non-compliance with such sanctions. *United States v. United Mine Workers of America*, 330 U.S. 258, 290-92 (1947). This Court recently explained the *United Mine Workers* decision in the following manner:

> In *United States v. Mine Workers*, 330 U.S. 258, 67 S.Ct. 677, 91 L.Ed. 884 (1947), we upheld a criminal contempt citation even on the assumption that the District Court issuing the citation was without jurisdiction over the underlying action. In that case, the question was raised on direct review and not collateral attack. We think the same concern expressed in these cases—the maintenance of orderly procedure, even in the wake of a jurisdiction ruling later found to be mistaken—justifies the conclusion that the sanction ordered here need not be upset.

Willy v. Coastal Corp., 503 U.S. 131, 137 (1992).

The Feldmans are not unique in their attempt to avoid an adverse judgment through a collateral attack. In 1931, this Court was confronted with a collateral attack on the issue of personal jurisdiction. Although the respondent had specially appeared, the trial court had found personal jurisdiction. A final and ultimately non-appealable judgment was entered. The respondent sought to avoid enforcement through a collateral attack on the original judgment in which he alleged an absence of jurisdiction. In rejecting the argument, this Court ruled as follows [citations omitted]:

> The substantial matter for determination is whether the judgment amounts to *res judicata* on the question of the jurisdiction of the court which rendered it over the person of the respondent. It is of no moment that the appearance was a special one expressly saving any submission to such jurisdiction. That fact would

> be important upon appeal from the judgment, and would save the question of the propriety of the court's decision on the matter.... [The respondent] had the election not to appear at all. If, in the absence of appearance, the court had proceeded to judgment, and the present suit had been brought thereon, respondent could have raised and tried out the issue in the present action, because it would never have had its day in court with respect to jurisdiction. It also had the right to appeal.... It elected to follow neither of these courses, but, after having been defeated upon full hearing in its contention as to jurisdiction, it took no further steps, and the judgment in question resulted.
>
> Public policy dictates that there be an end to litigation; that those who have contested an issue shall be bound by the results of the contest; and that matters once tried shall be considered forever settled as between the parties.

Baldwin v. Iowa State Traveling Men's Ass'n, 283 US 522, 524-25 (1931).

The *Baldwin* finality principles take on added importance when the Court is confronted with vexatious litigants such as the Feldmans. Mr. Feldman chose to violate the Bankruptcy Court order confirming Intermarque's Chapter 11 plan of reorganization. The Bankruptcy Court decided that those violations required the imposition of a permanent injunction against Mr. Feldman. Then, Mr. Feldman promptly violated the permanent injunction, and the Bankruptcy Court reasonably concluded that such violation justified the imposition of base sanctions. When Mr. Feldman elected not to pay the base sanctions, the Bankruptcy Court concluded that such non-payment justified the imposition of coercive daily sanctions. Rather than

prosecute his appellate rights, Mr. Feldman elected to ignore the imposition of the coercive daily sanctions.

Almost simultaneously with Mr. Feldman's violations of the permanent injunction, the Feldmans jointly chose to file two bad faith bankruptcy cases. The Bankruptcy Court imposed base sanctions against the Feldmans arising out of their conduct in the bad faith bankruptcy cases. Consistent with their contemptuous disregard for prior Bankruptcy Court orders, the Feldmans elected not to pay those base sanctions. After the Bankruptcy Court conducted another hearing and determined that the Feldmans were able to pay the new base sanctions, the Court imposed additional daily sanctions to coerce the Feldmans to comply.

The cumulative sanctions eventually grew to the $253,700 sanctions amount. Now, the Feldmans collaterally attack the underlying judgments that arose from their misconduct. In the end, the Feldmans' arguments are an inadequate façade that cannot mask their ultimate failure to accept personal responsibility for their misconduct.

Res judicata is designed to ensure the finality of judicial decisions. *Brown v. Felsen*, 442 U.S. 127, 131 (1979). It is not "a mere matter of practice or procedure inherited from a more technical time than ours. It is a rule of fundamental and substantial justice, of public policy and of private peace, which should be cordially regarded and enforced by the courts...." *Hart Steel Co. v. Railroad Supply Co.*, 244 U.S. 294, 299 (1917). *Res judicata* "encourages reliance on judicial decisions, bars vexatious litigation, and frees the courts to resolve other disputes." *Brown v. Felsen*, 442 U.S. 127, 131 (1979). "[I]ts enforcement is essential to the maintenance of social order; for, the aid of judicial tribunals would not be invoked for the vindication of rights of person and property, if ... conclusiveness did not attend the judgments of such tribunals." *Nevada v. United States*, 463 U.S. 110, 129 (1983). In keeping with those long-established principles, the Feldmans should be compelled to comply with the sanction orders.

The Feldmans rely on a series of old Supreme Court decisions to rationalize their failure to comply with the sanction orders. However, the law concerning the *res judicata* effect of jurisdictional decisions significantly evolved during the 1930's. Since that time, jurisdictional decisions have been entitled to the same *res judicata* effect as any other court decision.

The Supreme Court authorities that the Feldmans cite reflect the evolution of the law. *Valley v. Northern Fire & Marine Ins. Co.* held that a bankruptcy court could not obtain subject matter jurisdiction over an insurance company when the statute explicitly prohibited jurisdiction. *Valley v. Northern Fire & Marine Ins. Co.*, 254 U.S. 348 (1920). In *Valley*, there had been no prior challenge to the court's jurisdiction. The ultimate question in *Valley* was whether the jurisdictional question could be raised *for the first time in a collateral attack*. Following *Valley*, this Court ruled that jurisdictional questions were subject to *res judicata* after they have been litigated. *Stoll v. Gottlieb*, 305 U.S. 165, 172 (1938). In this case, the Bankruptcy and District courts determined that jurisdiction existed, the Feldmans lost twelve appeals, and they now seek to reconsider the long-since determined jurisdictional issue. *Valley* is inapposite.

The Feldmans also rely on *United States v. Williams*, 341 U.S. 58 (1951). *Williams* was a perjury case in which this Court held that perjury in a trial court—even in the absence of jurisdiction by the trial court over the underlying crime—was still perjury before a competent tribunal. *United States v. Williams*, 341 U.S. 58, 65-66 (1951). The Feldmans rely on a "sound bite" from *Williams*. That snippet merely provides that certain essential facts must exist for a court proceeding to avoid being rendered a nullity. The Court described those circumstances as rare and did not find them present in *Williams*.

The Feldmans suggest that the United States District Court lacked jurisdiction to impose sanctions for wrongful behavior in a

bankruptcy case that the Feldmans commenced in that District Court. Perhaps the Feldmans can argue that the trial court was wrong, but their argument deteriorates into absurdity when they assert that the District Court had no power over the proceedings and the litigants before the District Court.

The next Supreme Court decision that the Feldmans rely upon regarding the alleged absence of *res judicata* is *Noble v. Union River Logging R.R.*, 147 U.S. 165 (1893). *Noble* was decided long before the development of modern case law regarding jurisdictional issues. Nevertheless, in *Noble* this Court held that the Secretary of the Interior was bound by the prior administrative decisions of his predecessor. In dicta, this Court described that a decision by a court without jurisdiction was a nullity. But *Noble* did not deal with the *res judicata* effect of a jurisdictional decision.

The final Supreme Court decision that the Feldmans cite on the *res judicata* issue is *Durfee v. Duke*, 375 U.S. 106 (1963). *Durfee* was decided after *Stoll*, and reaches the *opposite* conclusion from the one that the Feldmans attribute to the decision. In *Durfee*, the issue was whether subject matter jurisdiction was *res judicata* or subject to collateral attack. *Durfee* rejected the argument that the Feldmans use in this case and held that subject matter jurisdiction was subject to the same *res judicata* effect as any other determination by a court of competent jurisdiction. *Durfee v. Duke*, 375 U.S. 106, 111 (1963). The Feldmans wrongly claim that the *Durfee* Court made the statement attributed to the Court on pages 26 and 27 of the Feldmans' petition. In fact, the *Durfee* Court excerpted the "quotation" from the RESTATEMENT OF CONFLICT OF LAWS (1948) and the RESTATEMENT OF JUDGMENTS (1942). The Court did not follow the Restatements' position. Indeed, both Restatements have now been revised to reflect the evolutionary change that occurred during the 1930's. For example, the RESTATEMENT OF JUDGMENTS now explains that:

> When the question of the tribunal's jurisdiction is raised in the original action, in a modern procedural

> regime there is no reason why the determination of the issue should not thereafter be conclusive under the usual rules of issue preclusion. The force of the considerations supporting preclusion is at least as great concerning determinations of the issue of jurisdiction as it is with respect to other issues.

RESTATEMENT (SECOND) OF JUDGMENTS § 12 (1982).

C. THE PER DIEM SANCTIONS ARE COERCIVE CIVIL SANCTIONS

Even if *res judicata* did not resolve this appeal, the Feldmans' substantive argument is inadequate to support it. The Feldmans' argument is premised on the following syllogism—

- Large sanctions awards are, by definition, criminal in nature.
- The daily sanctions imposed by the Bankruptcy Court grew to $253,700.
- $253,700 is a large sanction.
- Therefore, the daily sanctions imposed by the Bankruptcy Court must be criminal sanctions.

Inasmuch as criminal sanctions may not be imposed in a civil contempt proceeding, the Feldmans conclude that the sanctions are unenforceable.

The initial problem with the syllogism is that it treats the daily sanctions as a single, impermissible, lump sum award of $253,700. In fact, the daily sanctions accrued at a rate of only $1,000 per day. The question should be whether each $1,000 daily sanction was, in fact, criminal.

On a threshold basis, the Feldmans' argument lacks substance. According to the Feldmans' logic, any litigant faced with daily fines could simply (i) ignore the daily sanctions by failing to pay them; (ii) wait until the daily sanctions grew to become "large"; and (iii) after the passage of sufficient time, claim that the now large sanctions must be criminal sanctions and unenforceable.

The Feldmans' argument misses the mark badly. When daily sanctions are imposed for a coercive purpose, they will be upheld even if the passage of time results in large sanctions. For example, the imposition of coercive sanctions of $1,000,000 per day against the City of Yonkers was not "an abuse of discretion ... as a means of insuring compliance" with the District Court's order. *Spallone v. United States*, 493 U.S. 265, 276 (1990). The fines against the City of Yonkers grew to $1,000,000 per day after Yonkers refused to comply with the District Court order for fifteen consecutive days. *Spallone v. United States*, 487 U.S. 1251, 1257 (1988) (Marshall, J., concurring).

The Feldmans place substantial reliance on this Court's *Bagwell* decision. *United Mine Workers v. Bagwell*, 512 U.S. 821 (1994). However, *Bagwell* is not Feldman. In particular, the conduct in *Bagwell* required fact findings to determine whether violations of a broad order had occurred. In *Bagwell*, the trial court imposed fines for conduct that required discovery, evidence and witnesses to determine whether violations had, in fact, occurred. The trial court denied the union a jury trial and determined disputed fact issues without a jury. This Court described the trial court's orders as "complex injunctions often requiring elaborate and reliable factfinding." *Bagwell* at 833-34.

Conversely, the Feldmans' conduct was not disputed and was directly related to abuses of the civil justice system. The original sanctions were imposed against the Feldmans for their failure to comply with the litigation standards of a civilized society. When sanctioned for their conduct (such as Mr. Feldman's assault on a

member of the bar), the Feldmans elected not to pay the required discrete sanctions. They admitted this misconduct. As this Court stated in *Bagwell:*

> Courts traditionally have broad authority through means other than contempt... to penalize a party's failure to comply with the rules of conduct governing the litigation process. See, e.g., Fed.Rules Civ.Proc. 11, 37. Such judicial sanctions never have been considered criminal, and the imposition of civil, coercive fines to police the litigation process appears consistent with this authority.

Bagwell at 833.

In *Bagwell,* this Court recognized that coercive sanctions were civil in nature when the jural command was to "enforce orders compelling or forbidding a single, discrete act." *Bagwell* at 835. In this case, the Feldmans were merely commanded to pay sanctions that they had the financial ability to pay. Consequently, *Bagwell* does not render the Feldmans' sanctions criminal in nature.

Furthermore, the *Bagwell* Court specifically distinguished *Bagwell's* prospective fines that would be imposed if future wrongful conduct occurred from "coercive day fines" such as those used by the trial court to coerce the Feldmans. *Bagwell* at 837.

Although previously challenged to do so, the Feldmans are unable to explain why their repeated, daily violations of the Bankruptcy Court's orders should be tolerated. If vexatious litigants could ignore daily sanctions until the sanctions grew to a large amount, then courts would have no effective remedy (short of imprisonment) to coerce a contumacious litigant into compliance with the court's orders. Such a result would be contrary to sound public policy and the efficient administration of justice.

IV. CONCLUSION

The Feldman's petition fails to state a sufficient reason to grant a request for a *writ of certiorari* to the United States Court of Appeals for the Fifth Circuit. As with many vexatious litigants before them, this lawyer-husband-and-wife team believes that it can ignore an avalanche of adverse decisions while repeatedly relitigating a technical legal issue. This Court should uphold the rule of law and decline further consideration of this matter.

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